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BANKERS STANDARD INSURANCE  
6 COMPANY and ACE PROPERTY AND  
CASUALTY INSURANCE COMPANY  
7

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 JACK D. HARRISON and NAOMA  
HARRISON,

12 Plaintiffs,

13 vs.

14 BANKERS STANDARD INSURANCE  
15 COMPANY, ACE PROPERTY AND  
CASUALTY INSURANCE COMPANY,  
16 AMERICAN FAMILY MUTUAL  
INSURANCE COMPANY and BBVA  
17 COMPASS INSURANCE AGENCY,  
INC.; and DOES 1 through 50,

18 Defendants.  
19  
20  
21

Case No. 13CV1682 DMS JMA

**OBJECTIONS TO  
DECLARATIONS OF RICHARD  
MASTERS, JACK D. HARRISON,  
AND JAMES B. PANTHER IN  
SUPPORT OF DEFENDANTS  
BANKERS STANDARD  
INSURANCE CO.'S AND ACE  
PROPERTY AND CASUALTY  
INSURANCE CO.'S REPLY TO  
OPPOSITION TO MOTION TO  
DISMISS**

**DATE: November 8, 2013  
TIME: 1:30 p.m.  
COURTROOM: 13A**

***Judge Dana M. Sabraw***

22 Defendants Ace Property and Casualty Insurance Company ("AP&C") and  
23 Bankers Standard Insurance Company ("Bankers Standard") (collectively  
24 "Defendants") hereby object to the Declarations of Richard Masters, Jack D. Harrison,  
25 and James B. Panther filed in support of Plaintiffs' Opposition to Defendants' F.R.C.P.  
26 12(b)(6) Motion to Dismiss pursuant to the Federal Rules of Evidence and other  
27 applicable law as set forth below:  
28

1           1. Defendants object to the Declaration of Richard Masters ("Masters  
2 Declaration") in its entirety pursuant to F.R.E. 402 and 702 because:

3           (1) it is irrelevant. Mr. Masters' opinions concerning the interpretation of  
4 the policy provisions of Plaintiffs' insurance policy is irrelevant as the  
5 Bankers Standard policy speaks for itself. "If contractual language is  
6 clear and explicit, it governs." *Boghos v. Certain Underwriters at Lloyd's*  
7 *of London*, 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting  
8 *Bank of the West, supra*, 2 Cal. 4th at 1264); Cal. Civ. Code § 1638; and  
9 (2) to the extent that the Masters Declaration does purport to opine on the  
10 issues before the Court, it does so in the form of bare conclusions of law  
11 which invade the province of this Court. Under California law, the  
12 interpretation of an insurance policy is a question of law for the court.  
13 *MacKinnon v. Truck Ins. Exch.*, 31 Cal.4th 635, 647, 3 Cal.Rptr. 3d 228  
14 (2003); *Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 18, 44 Cal. Rptr.  
15 2d 370 (1995). An expert witness cannot give an opinion on an issue of  
16 law or provide legal conclusions. *See, e.g., Nationwide Transport*  
17 *Finance v. Cass Information Systems, Inc.*, 523 F.3d 1051, 1058 (9<sup>th</sup> Cir.  
18 2008).

19           2. Defendants object to the Declaration of James B. Panther ("Panther  
20 Declaration") in its entirety pursuant to F.R.E. 402 and 702 on the same bases as  
21 outlined above in regard to Masters Declaration.

22           3. Defendants object to the specific portions of the Declaration of Jack D.  
23 Harrison ("Harrison Declaration") as outlined below.

24           In addition, specific portions of the Masters Declaration, Harrison Declaration,  
25 and Panther Declaration are objectionable pursuant to the Federal Rules of Evidence  
26 and other applicable law as set forth below. For the convenience of the Court, where  
27 possible, certain paragraphs have been grouped together.

## SPECIFIC OBJECTIONS

### I. Masters Declaration

Objectionable Text	Legal Objection(s)
<p><b>Paragraphs 1-9:</b> Qualifications and background.</p>	<p><b>F.R.E. 402:</b> Qualifications and background information not of consequence to the determination of Defendants' Motion to Dismiss because the conclusory "expert" testimony that follows is irrelevant, inadmissible and improper.</p>
<p><b>Paragraph 10:</b> "I have reviewed and analyzed the insurance policies of Bankers Standard Insurance Company and ACE ("Bankers") with the Plaintiff's counsel and from an underwriting perspective; I offer these preliminary opinions in this declaration."</p>	<p><b>F.R.E. 402:</b> It is unknown what specific insurance policies were reviewed by Mr. Masters. Further, the Defendants Bankers Standard insurance policy at issue speaks for itself. Mr. Masters' "expert" interpretation of Defendants' policies is irrelevant. "If contractual language is clear and explicit, it governs." <i>Boghos v. Certain Underwriters at Lloyd's of London</i>, 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting <i>Bank of the West, supra</i>, 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial interpretation." <i>AIU Ins. Co. v. Superior Court</i>, 51 Cal. 3d 807, 799 P.2d 1253 (1990).</p> <p><b>F.R.E. 702:</b> There is insufficient evidence that Mr. Masters bases his conclusions with respect to the</p>

1		Defendants' insurance policies on
2		"sufficient facts or data." There is also no
3		evidence that Mr. Masters' conclusions
4		are "the product of reliable principles or
5		methods." Finally, to the extent that the
6		testimony purports to summarize or
7		explain the evidence or determine a fact
8		in issue, the Court does not need Mr.
9		Masters' "expert" assistance in order to
10		understand the insurance policies at issue.
11		(See authority cited above in connection
12		with F.R.E. 402). To be admissible,
13		expert testimony must assist the trier of
14		fact to understand the evidence or to
15		determine a fact in issue.
16		<b>F.R.E. 602:</b> To the extent that Mr.
17		Masters offers lay opinions as opposed to
18		"expert" opinions, there is no foundation
19		that the witness has personal knowledge
20		of the matter.
21	<b>Paragraphs 11-13 (in their entirety):</b>	<b>F.R.E. 402:</b> The Defendant Bankers
22	Quotation of policy provisions and Mr.	Standard's insurance policy at issue
23	Masters' interpretation thereof as applied	speaks for itself. Mr. Masters' "expert"
24	to this case.	interpretation of Defendants' policies is
25		irrelevant. "If contractual language is
26		clear and explicit, it governs." <i>Boghos v.</i>
27		<i>Certain Underwriters at Lloyd's of</i>
28		<i>London</i> , 36 Cal. 4th 495, 501, 30 Cal.
		Rptr. 3d 787(2005) (quoting <i>Bank of the</i>
		<i>West, supra</i> , 2 Cal. 4th at 1264); Cal. Civ.
		Code § 1638. The "clear and explicit"
		meaning of contract provisions,
		"interpreted in their 'ordinary and popular
		sense,' unless 'used by the parties in a
		technical sense or a special meaning is
		given to them by usage,' controls judicial
		interpretation." <i>AIU Ins. Co. v. Superior</i>

1		<i>Court</i> , 51 Cal. 3d 807, 799 P.2d 1253
2		(1990).
3		<b>F.R.E. 702:</b> There is no foundation that
4		Mr. Masters possesses a higher degree of
5		knowledge, skill, experience, training, or
6		education than this Court to determine the
7		application of the referenced policy
8		provisions to this case.
9		The testimony invades the province of
10		this Court. Under California law, the
11		interpretation of an insurance policy is a
12		question of law for the court to decide.
13		<i>MacKinnon v. Truck Ins. Exch.</i> , 31
14		Cal.4th 635, 647, 3 Cal.Rptr. 3d 228
15		(2003); <i>Waller v. Truck Ins. Exch., Inc.</i> ,
16		11 Cal. 4th 1, 18, 44 Cal. Rptr. 2d 370
17		(1995). An expert witness cannot give an
18		opinion on an issue of law or provide
19		legal conclusions. <i>See, e.g., Nationwide</i>
20		<i>Transport Finance v. Cass Information</i>
21		<i>Systems, Inc.</i> , 523 F.3d 1051, 1058 (9 <sup>th</sup>
22		Cir. 2008).
23		<b>F.R.E. 602:</b> To the extent that Mr.
24		Masters offers lay opinions as opposed to
25		"expert" opinions, there is no foundation
26		that the witness has personal knowledge
27		of the matter.
28	<b>Paragraph 14, Lines 5-11:</b> "From an underwriting standpoint, Bankers cannot use this limitation because there is a specific exception to this provision that clearly states that the Special Limits provision does not apply to personal property moved or being moved from the residence premises to a residence you	<b>F.R.E. 402:</b> The Defendant Bankers Standard's insurance policy at issue speaks for itself. Mr. Masters' "expert" interpretation of Defendants' policies is irrelevant. "If contractual language is clear and explicit, it governs." <i>Boghos v.</i> <i>Certain Underwriters at Lloyd's of</i> <i>London</i> , 36 Cal. 4th 495, 501, 30 Cal.

1 newly acquire. Both the Colorado  
 2 dwelling and the California dwelling are  
 3 owned by the Harrisons at the time of the  
 4 loss. Both properties meet the definition  
 5 of 'residence premises'. The Colorado  
 6 property is a dwelling that the Harrisons  
 7 own or reside in. The California property  
 8 is a dwelling that the Harrisons own or  
 9 reside in."

Rptr. 3d 787(2005) (quoting *Bank of the West, supra*, 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial interpretation." *AIU Ins. Co. v. Superior Court*, 51 Cal. 3d 807, 799 P.2d 1253 (1990).

**F.R.E. 702:** There is no foundation that Mr. Masters possesses a higher degree of knowledge, skill, experience, training, or education than this Court to determine the application of the referenced policy provision to this case. There is also no evidence that Mr. Masters' possesses the information to determine whether the "Colorado dwelling" and the California dwelling" were owned by the Plaintiffs at the time of loss, or whether both properties meet the definition of "residence premises."

The testimony invades the province of this Court. Under California law, the interpretation of an insurance policy is a question of law. *MacKinnon v. Truck Ins. Exch.*, 31 Cal.4th 635, 647, 3 Cal.Rptr. 3d 228 (2003); *Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 18, 44 Cal. Rptr. 2d 370 (1995). An expert witness cannot give an opinion on an issue of law or provide legal conclusions. *See, e.g., Nationwide Transport Finance v. Cass Information Systems, Inc.*, 523 F.3d 1051, 1058 (9<sup>th</sup> Cir. 2008).



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2		<b>F.R.E. 602:</b> To the extent that Mr.
3		Masters offers lay opinions as opposed to
4		"expert" opinions, there is no foundation
5		that the witness has personal knowledge
6		of the matter.
7	<b>Paragraph 15 (in its entirety):</b> "The	<b>F.R.E. 702:</b> There is insufficient
8	personal property that was stolen was in	evidence that Mr. Masters basis this
9	the process of being moved from a	conclusion on "sufficient facts or data."
10	dwelling the Harrisons owned to a newly	There is also no evidence that Mr.
11	acquired dwelling they also owned."	Masters' conclusion is "the product of
12		reliable principles or methods." Finally,
13		to the extent that the testimony purports
14		to summarize or explain the evidence or
15		determine a fact in issue, the Court does
16		not need Mr. Masters' "expert" assistance
17		to determine whether the stolen property
18		was in the process of being moved from a
19		dwelling the Harrisons owned to a newly
20		acquired dwelling they also owned. To
21		be admissible, expert testimony must
22		assist the trier of fact to understand the
23		evidence or to determine a fact in issue.
24		<b>F.R.E. 602:</b> To the extent that Mr.
25		Masters offers lay opinions as opposed to
26		"expert" opinions, there is no foundation
27		that the witness has personal knowledge
28		of the matter.
22	<b>Paragraphs 16-18 (in their entirety):</b>	<b>F.R.E. 402:</b> The Defendant Bankers
23	Quotation of policy provisions and Mr.	Standard's insurance policy at issue
24	Masters' interpretation thereof as applied	speaks for itself. Mr. Masters' "expert"
25	to this case.	interpretation of Defendant Bankers
26		Standard's policy is irrelevant. "If
27		contractual language is clear and explicit,
28		it governs." <i>Boghos v. Certain</i>
		<i>Underwriters at Lloyd's of London</i> , 36

Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting *Bank of the West, supra*, 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial interpretation." *AIU Ins. Co. v. Superior Court*, 51 Cal. 3d 807, 799 P.2d 1253 (1990).

**F.R.E. 702:** There is no foundation that Mr. Masters possesses a higher degree of knowledge, skill, experience, training, or education than this Court to determine the application of the referenced policy provisions to this case.

The testimony invades the province of this Court. Under California law, the interpretation of an insurance policy is a question of law for the court. *MacKinnon v. Truck Ins. Exch.*, 31 Cal.4th 635, 647, 3 Cal.Rptr. 3d 228 (2003); *Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 18, 44 Cal. Rptr. 2d 370 (1995). An expert witness cannot give an opinion on an issue of law or provide legal conclusions. *See, e.g., Nationwide Transport Finance v. Cass Information Systems, Inc.*, 523 F.3d 1051, 1058 (9<sup>th</sup> Cir. 2008).

**F.R.E. 602:** To the extent that Mr. Masters offers lay opinions as opposed to "expert" opinions, there is no foundation that the witness has personal knowledge of the matter.



**Paragraphs 19-20 (in their entirety):**  
Mr. Masters' interpretation of Plaintiffs' total claim amounts and coverage owed under the policies.

**F.R.E. 402:** The Defendant Bankers Standard's insurance policy at issue speaks for itself. Mr. Masters' "expert" interpretation of Defendants' policies is irrelevant. "If contractual language is clear and explicit, it governs." *Boghos v. Certain Underwriters at Lloyd's of London*, 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting *Bank of the West, supra*, 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial interpretation." *AIU Ins. Co. v. Superior Court*, 51 Cal. 3d 807, 799 P.2d 1253 (1990).

**F.R.E. 702:** There is insufficient evidence that Mr. Masters bases his conclusions and calculations on "sufficient facts or data." There is also no evidence that Mr. Masters' conclusions are "the product of reliable principles or methods."

The testimony invades the province of this Court. Under California law, the interpretation of an insurance policy is a question of law for the court. *MacKinnon v. Truck Ins. Exch.*, 31 Cal.4th 635, 647, 3 Cal.Rptr. 3d 228 (2003); *Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 18, 44 Cal. Rptr. 2d 370 (1995). An expert witness cannot give an opinion on an issue of law or provide legal conclusions. *See, e.g., Nationwide Transport Finance v. Cass*

*Information Systems, Inc.*, 523 F.3d 1051, 1058 (9<sup>th</sup> Cir. 2008).

**F.R.E. 602:** To the extent that Mr. Masters offers lay opinions as opposed to "expert" opinions, there is no foundation that the witness has personal knowledge of the matter.

## **II. Harrison Declaration**

<b>Objectionable Text</b>	<b>Legal Objection(s)</b>
<b>Paragraph 3 (in its entirety):</b> "The lender for our home in Rancho Santa Fe, California required us to purchase a homeowner's policy covering fire, theft, etc."	<b>F.R.E. 402:</b> The alleged requirement by the lender of Mr. Harrison's home in Rancho Santa Fe to purchase a homeowner's policy covering fire, theft, etc. is irrelevant and has no bearing on the issues presented in the instant Motion to Dismiss.
<b>Paragraph 4 (following section):</b> "Coverage was also important to us as we were in the process relocating personal belongings from our home in Colorado to our other home in Rancho Santa Fe, California...I was informed that the policies provided coverage 'anywhere in the world' and that I had ample coverage of my properties. (See Exhibit 1)."	<b>F.R.E. 402:</b> The importance of coverage to Mr. Harrison is irrelevant and has no bearing on the issues presented in the instant Motion to Dismiss. Further, the Defendants' insurance policies at issue speak for themselves. "If contractual language is clear and explicit, it governs." <i>Boghos v. Certain Underwriters at Lloyd's of London</i> , 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting <i>Bank of the West, supra</i> , 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial

1		interpretation." <i>AIU Ins. Co. v. Superior Court</i> , 51 Cal. 3d 807, 799 P.2d 1253 (1990).
2		
3		
4	<b>Paragraph 7 (lines 10-11):</b> "...was to be	<b>F.R.E. 402:</b> The Defendant Bankers
5	shared by Bankers, ACE and American	Standard's insurance policy at issue
6	Family (See Exhibit 2)."	speaks for itself. Plaintiff's subjective
7		understanding is irrelevant. "If
8		contractual language is clear and explicit,
9		it governs." <i>Boghos v. Certain</i>
10		<i>Underwriters at Lloyd's of London</i> , 36
11		Cal. 4th 495, 501, 30 Cal. Rptr. 3d
12		787(2005) (quoting <i>Bank of the West</i> ,
13		<i>supra</i> , 2 Cal. 4th at 1264); Cal. Civ. Code
14		§ 1638. The "clear and explicit" meaning
15		of contract provisions, "interpreted in
16		their 'ordinary and popular sense,' unless
17	<b>Paragraph 8 (in its entirety):</b> "I	'used by the parties in a technical sense or
18	understood that my claims met the criteria	a special meaning is given to them by
19	for full coverage under my insurance	usage,' controls judicial interpretation."
20	policies."	<i>AIU Ins. Co. v. Superior Court</i> , 51 Cal.
21		3d 807, 799 P.2d 1253 (1990).
22		
23		<b>F.R.E. 402:</b> The Defendant Bankers
24		Standard's insurance policy at issue
25		speaks for itself. Mr. Harrison's
26		subjective understanding is irrelevant. "If
27		contractual language is clear and explicit,
28		it governs." <i>Boghos v. Certain</i>
		<i>Underwriters at Lloyd's of London</i> , 36
		Cal. 4th 495, 501, 30 Cal. Rptr. 3d
		787(2005) (quoting <i>Bank of the West</i> ,
		<i>supra</i> , 2 Cal. 4th at 1264); Cal. Civ. Code
		§ 1638. The "clear and explicit" meaning
		of contract provisions, "interpreted in
		their 'ordinary and popular sense,' unless
		'used by the parties in a technical sense or
		a special meaning is given to them by
		usage,' controls judicial interpretation."

	<p><i>AIU Ins. Co. v. Superior Court</i>, 51 Cal. 3d 807, 799 P.2d 1253 (1990).</p> <p><b>F.R.E. 802:</b> The Statement appears to be hearsay.</p>
<p><b>Paragraph 9 (in its entirety):</b>          "According to the Senior Field Adjuster of ACE, my claim for personal property was supposed to be covered because it was not subject to a special limit (See Exhibit 3)."</p>	<p><b>F.R.E. 402:</b> The Defendant Bankers Standard's insurance policy at issue speaks for itself. Mr. Harrison's subjective understanding is irrelevant. "If contractual language is clear and explicit, it governs." <i>Boghos v. Certain Underwriters at Lloyd's of London</i>, 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting <i>Bank of the West, supra</i>, 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial interpretation." <i>AIU Ins. Co. v. Superior Court</i>, 51 Cal. 3d 807, 799 P.2d 1253 (1990).</p> <p><b>F.R.E. 802:</b> Plaintiffs' statement is hearsay as Exhibit 3 entirely contradicts ¶9 of his declaration.</p>
<p><b>Paragraph 12 (in its entirety):</b>          Accounting of property loss and claim amounts Mr. Harrison claims that his insurance carriers still owe.</p>	<p><b>F.R.E. 402:</b> The Defendant Bankers Standard's insurance policy at issue speaks for itself. Mr. Harrison's subjective understanding is irrelevant. "If contractual language is clear and explicit, it governs." <i>Boghos v. Certain Underwriters at Lloyd's of London</i>, 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting <i>Bank of the West, supra</i>, 2 Cal. 4th at 1264); Cal. Civ. Code</p>

§ 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial interpretation." *AIU Ins. Co. v. Superior Court*, 51 Cal. 3d 807, 799 P.2d 1253 (1990).

### III. Panther Declaration

Objectionable Text	Legal Objection(s)
Paragraphs 1-6 (in their entirety): Qualifications and background.	<b>F.R.E. 402:</b> Qualifications and background information not of consequence to the determination of Defendants' Motion to Dismiss because the conclusory "expert" testimony of Plaintiffs' attorney that follows is irrelevant, inadmissible and improper.
Paragraphs 7-9 (in their entirety): Quotation of policy provisions and Mr. Panther's interpretation thereof as applied to this case.	<b>F.R.E. 402:</b> The Defendant Bankers Standard's insurance policy at issue speaks for itself. Mr. Panther's "expert" interpretation of Defendants' policies is irrelevant and improper. "If contractual language is clear and explicit, it governs." <i>Boghos v. Certain Underwriters at Lloyd's of London</i> , 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting <i>Bank of the West, supra</i> , 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial

interpretation." *AIU Ins. Co. v. Superior Court*, 51 Cal. 3d 807, 799 P.2d 1253 (1990).

**F.R.E. 702:** There is no foundation that Mr. Panther possesses a higher degree of knowledge, skill, experience, training, or education than this Court to determine the application of the referenced policy provisions to this case.

The testimony invades the province of this Court. Under California law, the interpretation of an insurance policy is a question of law for the court. *MacKinnon v. Truck Ins. Exch.*, 31 Cal.4th 635, 647, 3 Cal.Rptr. 3d 228 (2003); *Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 18, 44 Cal. Rptr. 2d 370 (1995). An expert witness cannot give an opinion on an issue of law or provide legal conclusions. *See, e.g., Nationwide Transport Finance v. Cass Information Systems, Inc.*, 523 F.3d 1051, 1058 (9<sup>th</sup> Cir. 2008).

**F.R.E. 602:** To the extent that Mr. Panther offers lay opinions as opposed to "expert" opinions, there is no foundation that the witness has personal knowledge of the matter.

**F.R.E. 802:** Hearsay as to information provided by his clients and others which form the basis of his "understanding" (i.e., ¶5 ("I am aware that my clients. . ."); ¶7 ("I understand that. . ."))

**Paragraph 10, Lines 16-22:** "From an underwriting standpoint, Bankers and

**F.R.E. 402:** The Defendant Bankers Standard's insurance policy at issue



ACE cannot use this limitation because there is a specific exception to this provision that clearly states that the Special Limits provision does not apply to personal property moved or being moved from the residence premises to a residence you newly acquire. Both the Colorado dwelling and the California dwelling are owned by the Harrisons at the time of the loss. Both properties meet the definition of 'residence premises'. The Colorado property is a dwelling that the Harrisons own or reside in. The California property is a dwelling that the Harrisons own or reside in."

speaks for itself. Mr. Panther's "expert" interpretation of Defendants' policies is irrelevant and improper. "If contractual language is clear and explicit, it governs." *Boghos v. Certain Underwriters at Lloyd's of London*, 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting *Bank of the West, supra*, 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial interpretation." *AIU Ins. Co. v. Superior Court*, 51 Cal. 3d 807, 799 P.2d 1253 (1990).

**F.R.E. 702:** There is no foundation that Mr. Panther possesses a higher degree of knowledge, skill, experience, training, or education than this Court to determine the application of the referenced policy provision to this case.

The testimony invades the province of this Court. Under California law, the interpretation of an insurance policy is a question of law for the court. *MacKinnon v. Truck Ins. Exch.*, 31 Cal.4th 635, 647, 3 Cal.Rptr. 3d 228 (2003); *Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 18, 44 Cal. Rptr. 2d 370 (1995). An expert witness cannot give an opinion on an issue of law or provide legal conclusions. *See, e.g., Nationwide Transport Finance v. Cass Information Systems, Inc.*, 523 F.3d 1051, 1058 (9<sup>th</sup> Cir. 2008).

1		<b>F.R.E. 602:</b> To the extent that Mr.
2		Panther offers lay opinions as opposed to
3		"expert" opinions, there is no foundation
4		that the witness has personal knowledge
5		of the matter.
6	<b>Paragraphs 12-14 (in their entirety):</b>	<b>F.R.E. 402:</b> The Defendant Bankers
7	Quotation of policy provisions and Mr.	Standard's insurance policy at issue
8	Panther's interpretation thereof as applied	speaks for itself. Mr. Panther's "expert"
9	to this case.	interpretation of Defendants' policies is
10		irrelevant and improper. "If contractual
11		language is clear and explicit, it governs."
12		<i>Boghos v. Certain Underwriters at</i>
13		<i>Lloyd's of London</i> , 36 Cal. 4th 495, 501,
14		30 Cal. Rptr. 3d 787(2005) (quoting <i>Bank</i>
15		<i>of the West, supra</i> , 2 Cal. 4th at 1264);
16		Cal. Civ. Code § 1638. The "clear and
17		explicit" meaning of contract provisions,
18		"interpreted in their 'ordinary and popular
19		sense,' unless 'used by the parties in a
20		technical sense or a special meaning is
21		given to them by usage,' controls judicial
22		interpretation." <i>AIU Ins. Co. v. Superior</i>
23		<i>Court</i> , 51 Cal. 3d 807, 799 P.2d 1253
24		(1990).
25		<b>F.R.E. 702:</b> There is no foundation that
26		Mr. Panther possesses a higher degree of
27		knowledge, skill, experience, training, or
28		education than this Court to determine the
		application of the referenced policy
		provisions to this case.
		The testimony invades the province of
		this Court. Under California law, the
		interpretation of an insurance policy is a
		question of law. <i>MacKinnon v. Truck Ins.</i>
		<i>Exch.</i> , 31 Cal.4th 635, 647, 3 Cal.Rptr. 3d
		228 (2003); <i>Waller v. Truck Ins. Exch.</i> ,

	<p><i>Inc.</i>, 11 Cal. 4th 1, 18, 44 Cal. Rptr. 2d 370 (1995). An expert witness cannot give an opinion on an issue of law or provide legal conclusions. <i>See, e.g., Nationwide Transport Finance v. Cass Information Systems, Inc.</i>, 523 F.3d 1051, 1058 (9<sup>th</sup> Cir. 2008).</p> <p><b>F.R.E. 602:</b> To the extent that Mr. Panther offers lay opinions as opposed to "expert" opinions, there is no foundation that the witness has personal knowledge of the matter.</p> <p><b>F.R.E. 802:</b> Hearsay as to the policy provisions.</p>
<p><b>Paragraphs 15-19 (in their entirety):</b> Mr. Panther's interpretation of Plaintiffs' total claim amounts, payments made under the policies, and coverage owed under the policies.</p>	<p><b>F.R.E. 402:</b> The Defendant Bankers Standard's insurance policy at issue speaks for itself. Mr. Panther's "expert" interpretation of Defendants' policies is irrelevant. "If contractual language is clear and explicit, it governs." <i>Boghos v. Certain Underwriters at Lloyd's of London</i>, 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting <i>Bank of the West, supra</i>, 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial interpretation." <i>AIU Ins. Co. v. Superior Court</i>, 51 Cal. 3d 807, 799 P.2d 1253 (1990).</p> <p><b>F.R.E. 702:</b> There is insufficient evidence that Mr. Panther bases his</p>

conclusions and calculations on "sufficient facts or data." There is also no evidence that Mr. Panther's conclusions are "the product of reliable principles or methods."

The testimony invades the province of this Court. Under California law, the interpretation of an insurance policy is a question of law. *MacKinnon v. Truck Ins. Exch.*, 31 Cal.4th 635, 647, 3 Cal.Rptr. 3d 228 (2003); *Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 18, 44 Cal. Rptr. 2d 370 (1995). An expert witness cannot give an opinion on an issue of law or provide legal conclusions. *See, e.g., Nationwide Transport Finance v. Cass Information Systems, Inc.*, 523 F.3d 1051, 1058 (9<sup>th</sup> Cir. 2008).

**F.R.E. 804:** ¶16 & 17 are hearsay.

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Respectfully submitted,

COZEN O'CONNOR

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